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August 22, 1988

SEP 1 1988

Ms. Barbara T. Reid, Director
Municipal Services Division
Department of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

Re: Effect on RSA 31-A Block Grant Distribution of
1987 Hillsborough County Tax Misapportionment

Dear Barbara:

By previous memorandum, you have requested the opinion of this office relative to a proposed adjustment to the 1988 Block Grant distribution to correct errors in the prior year distribution which were occasioned by a miscalculation in the 1987 Department of Revenue Administration equalization survey. Specifically, you inquire as to the propriety of a directive by the Department to the State Treasurer that, on the basis of the latter's recalculation of the 1987 Block Grant distribution using correct equalization figures, it include an adjustment to the 1988 distribution to reflect this differential, and thereby remedy the miscalculation caused by the equalization error. In view of the Department's statutory responsibility to provide tax and equalized valuation information to the Treasurer under RSA 31-A:4 (Cum. Supp. 1987), so that a distribution reflecting that statute's legislative intent may be made, and in the absence of any legal or equitable bar to such an adjustment, this office is of the opinion that the proposed directive is both authorized and appropriate.



As we understand it, the need for such a directive arose in the following way. In calculating the 1987 equalized valuation of municipal property, pursuant to its statutory duty under RSA 21-J:3, XIII (Cum. Supp. 1987), in Hillsborough County, the Department erred in its determination of the equalized values of Manchester and Nashua. This error resulted in a misapportionment among the subject municipalities of the Hillsborough County tax as such is made on the basis of equalized property value. The Department intends to remedy the resulting underpayment by Manchester and Nashua and overpayment by the remaining Hillsborough County municipalities by a proposed adjustment to the 1988 Hillsborough County tax apportionment. See Attorney General Opinion to Barbara T. Reid of this date.

The same equalization error resulted in a further misallocation, however, in the 1987 statewide block grant distribution. This was due to the incorporation, mandated by RSA 31-A:4 (Cum. Supp. 1987), of the local equalized valuation of each New Hampshire municipality, into the distribution formula utilized by the Treasurer. Pursuant to that formula, when the quotient generated by the division of local equalized valuation into the sum of total local taxes assessed is multiplied by the local population, the result for each municipality is an "equalizing factor," which when aggregated, produces a total state sum. The total amount of grant funds appropriated by the legislature is distributed among the State's municipalities through use of a normalized factor, which is attained by dividing the total state sum into the local equalizing factor. Thus, the local share of the state grant for each municipality is calculated by the Treasurer by multiplying the municipality's normalized factor by the total grant. As a consequence of the formula's aggregation of local equalizing factors, the application of the resulting sum in 1987 generated inaccurate normalized factors for the several municipalities, and so necessarily, incorrect distributions.

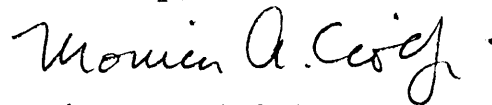
Upon discovery of its equalization error subsequent to the Treasurer's distribution, the Department provided correct equalization figures with which the Treasurer recalculated a proper 1987 distribution. The Department presently proposes to direct the Treasurer to incorporate the resulting differentials into the 1988 distribution, and to itself make a corresponding adjustment in setting the 1988 municipal tax rates which will reflect that adjusted distribution. See RSA 21-J:34-37 (Cum. Supp. 1987).

The Block Grant statute mandates distribution according to a specific formula. Because the 1987 distribution reflected an application of the formula which incorporated incorrect figures, the distribution was inconsistent with the legislation and therefore measures should be implemented which bring the distribution back into conformance. Those measures properly include an adjustment in the 1988 distribution to remedy the 1987 over-and underpayments. The Block Grant offset which will be effectuated by the Department's directive to the Treasurer merely represents a "mechanical adjustment to ensure compliance" with RSA 31-A:4 (Cum. Supp. 1987), and is within the Department's administrative discretion. See New Hampshire-Vermont Physician Service v. Durkin, 113 N.H. 717, 722 (1973).

Accordingly, in view of the statute's mandate, and the Department's responsibility therefor, we are of the opinion that the contemplated adjustment is appropriate.

I trust that this has been responsive to your request. Please do not hesitate to contact this office if we can be of further assistance.

Sincerely,



Monica A. Ciolfi
Attorney

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